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**IN THE COURT OF 12th ADDITIONAL SESSIONS JUDGE,
SURAT.**

CRIMINAL MISC. APPLICATION NO. 1696 of 2026

Exh.07

APPLICANT : Kapil Vinodbhai Gundigara,
(Accused) Aged about 27 years;
Occupation: Business;
Residing at 403, Silver Plaza, Opp.
Laxmi Hotel, Ashwinikumar, Surat.

Versus

OPPONENT : The State of Gujarat
(To be served through the Public
Prosecutor,
District & Sessions Court, Surat.)

APPEARANCE:

Mr. H. B. Goswami, Learned Advocate for the Applicant.

Mr. N. M. Vaghasia, learned Advocate for the original complainant.

Mr. N. M. Chodvadiya, Learned APP for the Opponent.

Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for Regular bail

:: J U D G E M E N T ::

[1.00] The present application has been filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short) for being enlarged on regular bail in connection with the offences punishable under Sections 316(5) and 54 of the Bharatiya Nyay Sanhita, 2023 ("BNS" for short) registered with Ashwinikumar Police Station, being C.R. No. Part - A : 11210013260035/2026.

[2.00] The facts in a nutshell, as narrated in the complaint, are to the effect that the present applicant - accused had contacted the complainant, who is carrying on business of diamonds, and the accused had taken the diamonds weighing 630.01 Karat valuing Rs.38,57,049/- during the period from 31/12/2024 to 17/01/2025, but, the applicant-accused has neither paid the amount of the said diamonds nor returned them to the complainant and therefore, since the applicant-accused has committed the offence of criminal breach of trust with the complainant, a complaint was given by the complainant to Ashvinikumar Police Station and offence under Sections 316(5) of BNS came to be registered on 19/01/2026, being C. R. No. Part-A: 11210013260035/2026

[3.00] The anticipatory bail application preferred by the applicant, being Criminal Misc. Application No.983/2026, was rejected *vide* the order dated 24/02/2026 and the applicant-accused has been arrested on 03/03/2026. Hence, the present application is moved by the applicant-accused for enlarging him on bail.

[3.01] On notice being issued to the opponent-State of Gujarat, learned Additional Public Prosecutor, Mr. N. M. Chodvadiya, has appeared and filed the affidavit sworn by the Investigating Officer at Exh.4. The *de facto* complainant has also appeared through his learned Advocate Mr. N. M. Vaghasiya and filed his affidavit *vide* Exh.6 objecting the bail application of the present applicant-accused.

[4.00] Heard the learned Advocate for the applicant, Mr. H. B. Goswami, and the learned Additional Public Prosecutor, Mr. B. N. Chavda for the opponent-State of Gujarat.

[4.01] Mr. H. B. Goswami, learned Advocate for the applicant, has submitted that the present application is filed by the applicant-accused for regular bail on various grounds stated in the application, *inter alia*, the dispute involved in the case is purely of civil nature; that the false allegations and concocted facts have been made in the FIR; that no criminal offence is made out from the complainant's case, which at best raises a civil dispute; that there are no accusations warranting serious offence

attracting punishment of death sentence or life imprisonment, nor is the case triable by the Sessions Court and that the case is triable by the learned Judicial Magistrate. Ld. Advocate has relied upon following judgments:

1. Bhagirathsinh Jadeja v. State of Gujarat - 1984 GLH 515;
2. Lambar Kozar v. Enforcement Director - 2000(3) Crimes 521;
3. Sanjay Chandra v. CBI - 2012 Cri LJ (General) 712;
4. Nidhi Jha v. State of Bihar - 2008(0) Pat(1) 592;
5. Kalpnaben Patel v. State of Gujarat - SCA No. 1535/2020 Gujarat High Court;
6. Dataramsingh v. State of Uttar Pradesh - 2018(0)AIGIEL SC 613580;
7. Chandrakant v. State of Himachal Pradesh - 2018 Law Suit SC 1477; and,
8. Dinesh Parwat v. State of Bihar - 2007 Cri LJ (General) 2890

[4.02] *Per contra* Mr. N. M. Chodvadiya, learned Additional Public Prosecutor for the opponent-State of Gujarat, has opposed the grant of regular bail of the applicant and reiterated the objections filed by the complainant at Exh.4. He would submit that the applicant is facing allegations for the offences punishable under Sections 316(5) and 54 of BNS and if the application is granted, then, there are all chances of the accused tampering and hampering the investigation. He has submitted that there is one similar offence registered against the

present applicant. He has further submitted that the involvement of the applicant in the commission of the offence of cheating with the complainant is very much evident from the FIR and investigation papers and therefore, the present application does not deserve any consideration. He has further contended that the investigation is at initial stage and therefore, the present application may kindly be rejected.

[5.00] I have perused the complaint, police papers, documents filed by the applicant, as well as the affidavit sworn by the Investigating Officer at Exh.4 and affidavit of the original complainant at Exh.6.

[6.00] Having heard the learned Advocate for the accused and learned APP for the State and taking into consideration the facts stated in the complaint, police papers and affidavit filed by the Investigating Officer at Exh.4, it is *prima facie* transpired that the present accused is facing the charges for commission of the alleged offences punishable u/s.316(5) and 54 of BNS, the complainant, Shri Nileshbhai Madhubhai Sukhadiya, has alleged that the applicant has taken total of 630.01 carats of diamonds valuing at Rs. 38,57,049/- and in spite of repeated demands, the applicant did not pay the amount of the said diamonds nor as he returned it to the complainant and thereby, alleged offence of criminal breach of trust has been committed.

[7.00] In view of the allegations levelled by the complainant and given the nature of offences alleged against the applicant-accused, investigation is at the crucial stage and considering the reasonable apprehension of tampering with the witnesses and more particularly, when nowadays such type of incidents of committing criminal breach of trust are increasing rampantly and its impact on the society has also to be seen, in the considered opinion of this Court, discretionary powers are not required to be exercised in favour of the present applicant-accused and the present application deserves to be rejected. As regards reliance placed upon the judgements relied upon by the learned Advocate for the applicant, this Court is of the considered view that they do not extend any help to the present applicant at this stage since the investigation is at the nascent stage in the present case. In that view of the matter, the present application deserves to be rejected. Hence, the following order is passed:

:: ORDER ::

The present application is hereby rejected.

Signed & Pronounced in the open Court today i.e. on the 17th day of Month: March, and Year: 2026 under my hand and seal of this Court.

Date : 17/03/2026.

Place: Surat.

(Kamlesh Nathabhai Prajapati)
12th Additional Sessions Judge, Surat
(Code: GJ00886)

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